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March 18, 2021

Timothy K. Shuba
Engleman Fallon, PLLC
1717 K Street NW Suite 900
Washington D.C. 20006

RE: Docket No. 21-KELE-306-GEN

Mr. Shuba:

On February 15, 2021, Kansas Ethanol, LLC, ("Kansas Ethanol"), filed a Notice of Exemption with the Kansas Corporation Commission ("Commission") notifying the Commission of Kansas Ethanol's decision to opt-out of public utility regulation pursuant to K.S.A. 66-104(e). The Commission docketed this notice in Docket No. 21-KELE-306-GEN. Enclosed, please find a memorandum acknowledging Kansas Ethanol's Notice of Exemption. The docket will be closed in accordance with the memorandum. Of course, if you have any questions please do not hesitate to contact me directly.

Best regards,

_____/s/Cole Bailey
Cole Bailey, #27586
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Attorney for Commission Staff

MEMORANDUM

To: Timothy K. Shuba, Attorney for Kansas Ethanol, LLC

From: Cole Bailey, Kansas Corporation Commission, Litigation Counsel

Date: March 18, 2021

Re: Docket No. 21-KELE-306-GEN

K.S.A. 66-104(a) defines “public utility” and subjects such public utilities to regulation by the Kansas Corporation Commission (“Commission”).¹ K.S.A. 66-104(e) provides an exemption from public utility regulation for activities or facilities “as to the generation, marketing, and sale” of electricity which are placed in service on or after January 1, 2001, and are not in the rate base of an electric public utility, cooperative, or municipally owned electric utility.

On February 15, 2021, Kansas Ethanol, LLC (“Kansas Ethanol”), filed a Notice of Exemption with the Commission notifying the Commission of Kansas Ethanol’s decision to opt-out of public utility regulation pursuant to K.S.A. 66-104(e). In its Notice of Exemption, Kansas Ethanol explained it was developing and constructing a cogeneration facility at the site of its existing ethanol plant in Rice County, Kansas. The facility will be natural gas fired turbine generator with nameplate capacity of 14 MW. Energy not used by the ethanol plant will be sold to the local electric utility, Midwest Energy, Inc. The Commission docketed Kansas Ethanol’s Notice of Exemption in Docket No. 21-KELE-306-GEN.

There is no statutory process or requirement for Commission authorization regarding a public utility exercising its option to exempt itself from public utility regulation. Commission Staff believes the Notice of Exemption is an appropriate method for Kansas Ethanol to exercise its option to exempt itself from public utility status to the extent K.S.A. 66-104(e) applies. While making no judgment as to the ability of Kansas Ethanol to opt-out of “public utility” regulation with respect to its identified facilities, Staff notes that by virtue of opting-out, Kansas Ethanol certifies it is not required to comply with the Kansas Electric Transmission Line Siting Act² with respect to its transmission facilities, nor is it required to obtain a certificate of public convenience and necessity under K.S.A. 66-131.

¹ Public utilities are subject to regulation with respect to certification, wire stringing, line siting (for electric transmission lines), sufficient and efficient service, and just and reasonable rates. See K.S.A. 66-131; K.S.A. 66-183; K.S.A. 66-101b (for “electric public utilities”); K.S.A. 66-1,178.

² K.S.A. 66-1,177, *et seq.*

Furthermore, because Kansas Ethanol has opted out of its “public utility” designation, it may not exercise eminent domain under provisions of Kansas Law granting eminent domain powers to public utilities.³ Kansas Ethanol may not infer, imply, or represent to anyone that Kansas Ethanol has any such eminent domain powers. Staff will consider any such representations a forfeiture of Kansas Ethanol’s option to exempt itself from public utility status.

Finally, Staff regards Kansas Ethanol’s Notice of Exemption as only applying to Kansas Ethanol and limited to the project scope identified in the Notice. Any successor entity or future owner of the identified facilities shall provide its own Notice of Exemption, should the option to opt-out be available based on the facts at that time.

Because there is no process in Kansas statutes or regulations for Commission action regarding Kansas Ethanol’s Notice of Exemption under K.S.A. 66-104(e), this docket will be closed without action by the Commission.

³See K.S.A. 26-501b(b); K.S.A. 17-618.